IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1158 OF 2006

Jagmohan Dalmiya ... Petitoner.

V/s

State of Maharashtra ...Respondent.

Shri Adhik Shirodkar, Senior Counsel with Shri Maneshinde, Shri Rajendra Shirodkar, Shri T. Mukherjee, Shri Sayaji Nangre, Shri A. Bannerjee, Ms. Renuka Laxmeshwar i/b Huzefa Nasikwala, advocates for the petitioner.

Shri Ravi Kadam, Advocate General with Shri S.R. Borulkar Chief P.P. for the State.

Shri Shirish Gupte, Senior Counsel with Mrs. U.K. Dahanuhar i/b Khaitan & Jaykar for the original complainant.

ALONGWITH

CRIMINAL APPLICATION NO. 1187 OF 2006

S.K. Nair ....Petitioner.

V/s

State of Maharashtra ....Respondent.

Shri Rajendra Shirodkar with Shri Sayaji Nangre i/b Huzefa Nasikwala for the petitioner.

Mr. Amit Desai i/b Khaitan & Jaykar for the original complainant.

Ms. Rajendra M. Gadhvi, APP for the State.

ALONGWITH

CRIMINAL APPLICATION NO. 1188 OF 2006

Kishore Rungta .....Petitioner.

V/s

State of Maharashtra .....Respondent.

Mr. Satish Maneshinde with Mr. Sayaji Nangre i/b Huzefa Nasikwala for the petitioner.

Mr. Samsher Garud i/b Khaitan & Jayakar for the original complainant.

Ms. S.D. Shinde, APP for the State.

ALONGWITH

CRIMINAL APPLICATION NO. 1189 OF 2006

Jyoti Bajpai .....Petitioner.

V/s

State of Maharashtra .....Respondent.

Mr. Sayaji Nangre i/b Huzefa Nasikwala, Renuka Laxmeshwar for the petitioner.

Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 10th April, 2006

P.C.:

1. Heard the learned Senior Counsel for the petitioner, the learned Advocate General and the learned Senior Counsel appearing on behalf of the original complainant at length.

2. These four applications for anticipatory bail can be disposed of by a common order since they are arising out of the same C.R. which has been filed initially at the Marine Drive Police Station and later on it was transferred to EOW GBCB CID.

3. Brief facts which are relevant for the purpose of deciding these applications are as under:-

4. The petitioner in Criminal Application No. 1158 of 2006 is the President of the Cricket Association of Bengal (hereinafter referred to as the "CAB") and one of the founder and full member of the Board of Control of Cricket in India (hereinafter referred to as the "BCCI"). He was also the President of International Cricket Council (hereinafter referred to as the "ICC") The petitioner is the former President of the BCCI, apart from being the Honorary Secretary and Honorary Treasurer. The petitioner was the Honorary Treasurer during 1983-84 to 1984-1985, the Honorary Secretary

during 1991-1993 to 1997 and was the President during 2001-2002 till 2003-2004. In the year 2004, the Annual General Body Meeting was contested between the two groups headed by Shri Sharad Pawar on the one side and Shri Ranbirsingh Mahendra. The election ended in tie for the post of President and the petitioner being the then President cast his vote in favour of Ranbirsingh Mahendra. In respect of the said Elections large number of litigations were filed in various courts. In the year 2005, the Annual General Meeting was also keenly contested and Shri Sharad Pawar and his supporters were successful in getting elected. The petitioner did not contest for any post since 2004.

5. The results of elections of 2005 were announced on 29/11/2005. A complaint was filed by Shri Niranjan Shah, the Secretary against the present petitioners on 16/3/2006 in which it was alleged that the Account was opened by the petitioner - Jagmohan Dalmiya at the Bhowanipor Branch of Indian Overseas Bank for the purpose of meeting the expenditure which was to be incurred during the worldcup 1996 which was organized by three countries viz. India, Pakistan and Sri Lanka. The joint Account of the three countries was opened in London and was known as PILCOM Account i.e.

Pakistan, India Lanka Committee Account and the Account which was opened in Bhowanipor Branch in the Indian Overseas Bank was termed as INDCOM Account and a resolution was passed by the Committee that the Account was to be opened by the President, Treasurer and the Secretary. It is alleged that the said Account was opened in the name of the petitioner - Jagmohan Dalmiya who was the only authorized signatory. A complaint, essentially, is in respect of the operation of this Account in Bhowanipore Branch of the Indian Overseas Bank and the gist of the allegations are as follows:-

(i) The accounts were never placed before the Working Committee or General Body.

(ii) The Bank Account was closed in February 2006 in spite of the directions given by the Working Committee that the Account was to be operated by Shri Niranjan Shah and yet, by flouting these directions, the Account was closed by Shri Jagmohan Dalmiya.

(iii) Though the balance at the foot of the Account was Rs 17 lakhs (approximately), a cheque for the amount of Rs 39 lakhs was given

by CAB in favour of BCCI towards the amount payable from the said account.

(iv) Initially, two Demand Drafts which were issued in favour of BCCI for an amount of Rs 17 lakhs were cancelled and the Demand Draft for the said amount was issued in favour of CAB while closing the account in the Bhowanipore Branch, Indian Overseas Bank and CAB, in turn, issued a cheque for an amount of Rs 39 lakhs in favour of BCCI.

(v) The details of the Account prior to 2005 were not given.

(vi) When Shri Jagmohan Dalmiya was questioned in respect of the said Account in the meeting of the Working Committee held on 21/2/2006, evasive answers were given by him.

(vii) In the reply which was given by Shri Jagmohan Dalmiya to the various queries raised in the meeting of the Working Committee dated 21/2/2006, it was stated that Rs 21.74 lakhs were utilised by him on his travel, boarding, lodging & conveyance and therefore this was an

admission of misappropriation.

(viii) It was alleged that though the petitioner - Jagmohan Dalmiya was the authorized signatory, the authority appeared to have been given to Shri K.M. Choudhary who was his employee who had issued letters to the Bank on the letter-head of Shri Jagmohan Dalmiya, asking the Bank to debit the Account in favour of one S.G. Traders and in favour of J.M. Tours and Travels and Voyage Tours and Travels. The total amount which was paid to S.G. Traders on the instructions of Shri S.G. Choudhary was to the tune of Rs 15,66,270/- and to J.M. Tours and Travels and Voyage Tours and Travels was to the tune of Rs 1,84,925/-.

(ix) The cash withdrawals of Rs 1.50 crores had been made over a period of 10 years though there was no authorization from the Board.

(x) The inspection of Bank Account & statements was not given.

(xi) It is alleged that the other petitioners

had conspired alongwith Shri Jagmohan Dalmiya and, therefore, they have committed an offence under section 120B of the Indian Penal Code.

6. The petitioners applied for anticipatory bail by filing these Criminal Applications directly in this Court. A preliminary objection was raised by Shri Borulkar, the learned Chief Public Prosecutor regarding the maintainability of the applications in this court on the ground that normally the applications should first be filed in the Sessions Court and, thereafter, in the High Court. This Court, by passing a reasoned order dated 21/3/2006, held that the applications were maintainable. Thereafter, on 23/3/2006 after the learned Counsel for the petitioners and the learned Advocate General who appeared on behalf of the State were heard for some time, this Court felt that an opportunity should be given to the Investigating Agency to investigate and also to the petitioners to explain the allegations which were made against them and, therefore, they were directed to remain present before the Investigating Officer in Mumbai for a period of four days and in Calcutta for a period of three days by a detailed order dated 23/3/2006.

SUBMISSIONS

7. The learned Counsel appearing on behalf of the Petitioners submitted that the petitioner - Jagmohan Dalmiya was defeated in the election which was held in 2005 and, therefore, in order to take vengeance and to settle the private scores, the present complaint has been filed in undue haste without giving any opportunity to him to explain the allegations regarding the Bank Account which was in operation for last 10 years to the knowledge of the complainant and other members of the Board. He submitted that the Account had been audited over the years since 1996 and was placed before the Working Committee, Financial Committee and the General Body. It is submitted that, initially, the Account was opened after the resolution was passed for the purpose of meeting the expenses incurred in the said Worldcup 1996. It is submitted that no query has been raised in the past 10 years in respect of the functioning and operation of the said Account when the complainant was the member during these 10 years and only after the petitioner - Jagmohan Dalmiya was defeated, the present complaint was filed to humiliate and implicate him so that, in future, he would not pose a threat to the members who were elected in the present election. He submitted

that it is an admitted position that after the Worldcup event was held in 1996, all the Accounts except the Account at Bhowanipor Branch was continued since the Income Tax Authorities had made claims to the tune of Rs 88 crores and the petitioner - Jagmohan Dalmiya being the resident of Calcutta, he was authorized to handle the accounts and was permitted to operate the said Account. He submitted that with this understanding the said Account was operated and the tax liability was successfully reduced from Rs 88 crores to Rs 4 crores and that the matter was pending in the High Court of Calcutta. He submitted that various amounts were spent towards the lawyers fees, fees of Chartered Accountants and other expenses. It is submitted that after the petitioner had taken over in 1993-94, the BCCI was running in loss with deficit balance of Rs 26 lakhs and in last 10 years, the BCCI earned profit of Rs 100 crores. He submitted that the Investigating Officer had not collected a single document regarding the balance-sheet and other returns during the interrogation. He submitted that the complainant was neither authorized by any Committee nor any resolution was passed by any Committee, authorizing the complainant to file any complaint. He submitted that the legal position for the grant of an anticipatory bail is well settled and that section 438

was introduced in the Statute Book only in order to protect the persons who are likely to be falsely implicated in criminal cases for the purpose of settling the private scores or business or due to political rivalry. He submitted that, in any case, custodial interrogation of the petitioner was not necessary since the entire case was based on operation of a single Bank Account and the entire documents were now in possession of police in respect of the said Bank Account and all other documents were in possession of the complainant and the newly elected body. Therefore, no purpose would be served in arresting the petitioner and keeping him in jail for few days and, thereafter, releasing him on bail.

8. The learned Advocate General Shri Kadam submitted that the petitioner - Jagmohan Dalmiya in his reply has admitted that he had used the amount of Rs 21 lakhs and this was a case of misappropriation of amounts over which the petitioner had no right to use it for meeting his personal expenses. He submitted that the petitioner had diverted the funds of the BCCI through his employee Shri K.G. Choudhary who was not the authorized signatory and an amount of Rs 16 lakhs (approximately) was paid to S.G. Traders who have stated that they were supplying stationery to the CAB.

He submitted that the payments which were made to Voyage Tours and Travels and J.K. Tours and Travels indicated that several amounts were paid for the expenses incurred by K.M. Choudhary for travelling by air and also by other persons including the present petitioner himself. He submitted that this material was sufficient to indicate the involvement of the petitioner in the commission of the said offence and on this ground alone, the anticipatory bail was liable to be rejected. The learned Advocate General also invited my attention to the reply which was given by the petitioner in which he had shown that an amount of Rs 65,000/- was withdrawn every month and it was shown that an amount of Rs 3,31,000/- (approximately) was paid to the lawyers and to the Chartered Accountants. A total amount of Rs 6 lakhs was, therefore, alleged to have been spent. He submitted that this explanation itself was palpably false as it is difficult to accept that the petitioner - Jagmohan Dalmiya would imagine or contemplate in advance that an amount of Rs 65,000/- would be required during the month for the expenses of lawyers. He submitted that, therefore, this was an instance which indicated falsity of the claim of the petitioner. He submitted that the allegation of malafide alleged by the petitioner was also incorrect. He invited my

attention to the letter which was written by the petitioner to Shri Sharad Pawar in which he had stated that Shri Pawar was fair enough to give him seven days time to give reply to the show-cause notice. The learned Advocate General submitted that though he had given a certificate of being fair to Shri Pawar in the said letter, for the purpose of filing this anticipatory bail, the allegation of malafide was made against Shri Pawar only to mislead this Court. He further submitted that the complaint is filed in Mumbai since the Headquarters of BCCI is situated in Mumbai and all accounts were maintained in Mumbai and, therefore, the allegation that the complaint was filed in Mumbai because the Home Minister of the State of Maharashtra belongs to the party of the President of the BCCI Shri Sharad Pawar, is false. He submitted that the custodial interrogation of the petitioner was verymuch essential in order to find out the role of S.G. Traders since in the statement of the proprietor of S.G. Traders, it was revealed that the S.G. Traders did not own any tourist vehicles. He submitted that it is also essential to find out where the money from the said Account had gone. He submitted that the anticipatory bail is normally granted in an exceptional cases and that, in the present case, there is sufficient material on record

to indicate that there was large-scale misappropriation of the amount by the petitioner - Jagmohan Dalmiya and, therefore, his custodial interrogation is necessary.

9. Shri Shirish Gupte, the learned Counsel appearing on behalf of BCCI submitted that the accounts of the said INDCOM Account and PILCOM Account were not audited which was clear from the report given in the Annual General Body Meeting held on 23/1/2006. He submitted that during the course of investigation, it had transpired that even there was withdrawal of 5000 pounds from the PILCOM and merely because the said fact was not mentioned in the FIR should not be construed to mean that the Investigating Officer did not have any right to investigate into the said aspect. He submitted that the complainant was authorized by the President to file the present complaint and, therefore, no separate resolution was necessary and there was instruction to file the complaint by the President who was authorized to take action against the petitioner. He submitted that the complaint was not filed in undue haste as alleged but was filed after an opportunity was given to the petitioner - Jagmohan Dalmiya to give an explanation and since the explanation could not be given,

thereafter the present complaint had been filed. He also refuted the allegations made by the petitioner regarding malafide and ulterior motive in filing the present complaint. He also filed an affidavit-in-reply of the complainant in which more particulars of the complainant have been mentioned. Shri Shirodkar, the learned Counsel appearing on behalf of the petitioners in rejoinder submitted that in respect of the alleged discrepancy of 5000 pounds from the PILCOM Account, a detailed inquiry was made by FERA Authorities and by the Reserve Bank of India who had exonerated the petitioner - Jagmohan Dalmiya which is evident from the letter written by the Reserve Bank of India dated 7th October, 1997 to the Deputy Director of Enforcement Directorate giving clean chit to the applicant and also by letter dated 17th October, 1997, the Deputy Director of the Enforcement Directorate wrote to Shri Jagmohan Dalmiya acknowledging that till date they had not detected any violation of the provisions of Foreign Exchange Regulation Act, 1973 against PILCOM or against the petitioner.

FINDINGS AND CONCLUSION:

10. I have given my anxious consideration to the

submissions made by the learned Senior Counsel appearing on behalf of the petitioners, the learned Advocate General and the learned Senior Counsel appearing on behalf of the complainant.

11. Since the admitted facts have been mentioned in the beginning I do not wish to again repeat the said facts in my reasoned order unless where emphasis has to be laid on certain aspects.

12. Since the law on the question of grant of an anticipatory bail is quite settled, the guide-lines for the grant of anticipatory bail have been considered in the case of Gurbaksh Singh Sibbia etc. vs. The State of Punjab reported in **AIR 1980 SC 1632,** and, thereafter, in the catena of cases the Supreme Court and this Court has held that this power should be exercised by the Sessions Court and the High Court in cases where it is found that the complaint has been filed malafidely and that the complaint and the material which is placed by the Investigating Agency does not disclose commission of the offence which is alleged to have been committed. Further, it has been held that merely because the offence which is alleged to have been committed is serious and is even punishable by life and death, that alone would not

warrant reading into the provisions of section 438 the restrictions which are imposed under section 437 of the Criminal Procedure Code. Further, it has been consistently held that this Court may exercise its jurisdiction which is vested in it under section 438 if it comes to the conclusion that the complaint which is filed is not bonafide but has been filed with a view to settle the private scores or business or political rivalry. The reference can be usefully made to the following judgments:-

(1) Gurbaksh Singh Sibbia etc. Vs. The State of Punjab reported in AIR 1980 SC 1632.

(2) Directorate of enforcement Vs. P.V. Prabhakar Rao reported in (1997) 6 SCC 647.

(3) State of A.P. Vs. Bimal Krishna Kundu & Anr. reported in (1997) 8 SCC 104.

(4) C.B.I. Vs. Anil Sharma reported in (1997) 7 SCC 187.

(5) Directorate of Enforcement Vs. Ashok Kumar Jain reported in (1998) 2 SCC 105.

(6) K.K. Jerath Vs. Union Territory of Chandigarh & Ors. reported in (1998) 4 SCC 80.

(7) Muraleedharan Vs. State of Kerala reported in (2001) 4 SCC 638.

(8) Harshad Mehta Vs. Union of India reported in (1992) Cr. L.J. 4032.

(9) Dukhishyam Benupani Vs. Arun Kumar Bajoria reported in (1998) 1 SCC 52.

(10) Mahesh K. Bhawasinghka Vs. State of Delhi reported in (2000) 9 SCC 383.

(11) Ramdhari Mishra Vs. State of Maharashtra reported in (2003) Bom.C.R. 215.

(12) Narinderjit Singh Sahani Vs. Union of India & Ors. reported in (2002) 2 SCC 210.

(13) Adri Dharan Das Vs. State of West Bengal reported in (2005) 4 SCC 303.

(14) Rajesh Bajaj Vs. State NCT of Delhi & Ors. reported in (1999) 3 SCC 259.

(15) Nagpur Steel & Alloys Pvt. Ltd. Vs. P Radhakrishnan & Ors. reported in (1997) SCC (Cri) 1073.

Though none of the counsel for the petitioners and the respondents have relied upon any judgments, I have chosen to refer to these judgments since the law on the subject has been elaborately considered and guidelines have been laid down

13. Taking into consideration the conspectus of these judgments and keeping in view the ratio of the judgment of the Supreme Court, I shall now examine the facts of this case and consider whether the case has been made out for grant of an anticipatory bail.

14. In my view, the petitioners have made out a case for grant of anticipatory bail considering the complaint and the material which has been placed before this Court by the Investigating Agency and by the complainant and, therefore, the petitioners are entitled to be released on anticipatory bail for the following reasons.

15. It is essential to take into consideration the brief chronology of events which has culminated in the

filing of the complaint against the present petitioners. The petitioner Shri Dalmiya was connected with the CAB and later on almost from 1994-95 he was at the helm of the affairs as Treasurer and, thereafter, as a Secretary and then as a President upto 2004. The worldcup of 1996 was jointly organized by the Pakistan, India and Sri Lanka and was to be held in these three countries simultaneously and for the said purpose a joint Account of Pakistan, India and Sri Lanka i.e. PILCOM was opened in London and an agreement to that effect was executed. This Account was to be audited by A.F. Ferguson & Company. Another account was opened in India at Bhowanipore Branch of Indian Overseas Bank at Calcutta which was referred to as INDCOM Account which was meant to cater to the expenses which were incurred in India for the purpose of organizing the matches in India. A resolution was passed in the BCCI in which it was resolved that such an Account would be opened and will be operated either by the Treasurer or by the Secretary or by the Chairman. The Account was opened and Shri Dalmiya was the authorized signatory of the Account. It is an admitted position that no objection was raised regarding the operation of the Account solely by Shri Dalmiya over a period of 10 years, though the accounts were audited from year to year and

the accounts were placed before the Working Committee, Finance Committee and the General Body. At this juncture, it has to be stated that though a statement on oath has been made by the petitioner Shri Dalmiya in his application that the accounts were duly audited, when a query was made to the Advocate General and the Counsel appearing on behalf of the BCCI, none of them were in a position to say whether, in fact, these accounts were audited. No statement on oath had been made in any affidavit-in-reply filed by the State or by the BCCI controverting the statement which is made on oath by the petitioner Shri Dalmiya. In any case, no reply is given by the learned Senior Counsel who appeared on behalf of the BCCI to the query which was made by this Court. On the contrary, the minutes of the meeting which was held on 23/1/2006 were shown and in paragraph in the said report it was mentioned that PILCOM has not been audited or audited accounts have not been shown was referred to. So far as the PILCOM Account is concerned, it is an admitted position that the said Account was to be audited by A.F. Ferguson and Company and that had nothing to do with the account which was opened in India. Further, it is an admitted position that further resolution was passed and all other accounts were closed except the present account i.e. the INDCOM Account at

Bhowanipore Branch with a specific understanding that the said Account would be utilised for the purpose of meeting the expenditure which was incurred or likely to be incurred to fight cases which were initiated by the Income-tax Department against the BCCI wherein a liability and penalty of Rs 88 crores was imposed by the Income-tax Authorities on BCCI. The complainant who has been the member of the BCCI for last 10 years, therefore, was definitely aware that the said Account was being operated solely by Shri Dalmiya and the Account continued to be operated in view of the pendency of the income-tax cases and it is a matter of record that a liability of Rs 88 crores was reduced to Rs 4 crores and the matter pertaining to the income-tax cases is pending in the Calcutta High Court.

16. At this juncture, it is also necessary to refer to the fact that in 1996 Shri Bindra was the President. However, after he stepped down as a President, he made certain allegations of misappropriation against the present petitioner Dalmiya. The show-cause notices were issued by FERA Authorities and an inquiry was also made by the Reserve Bank of India which was to the knowledge of the complainant in the year 1997-98 during which time,

after a thorough investigation, the Enforcement Directorate issued a letter to the petitioner Shri Dalmiya exonerating him from all the allegations which were made against him. The Reserve Bank of India also wrote a letter to the Enforcement Directorate, stating therein that after thorough investigation, the allegations which were made against the petitioner Dalmiya were found to be incorrect and false. In the background of these facts, it has to be seen what steps were taken by the complainant since the opening of the Account till the Account was closed by the petitioner. During all this period, neither the complainant or any of the other members filed any complaint regarding the misappropriation of any amount nor any query was raised by the complainant who was a member of the BCCI during the period of last 10 years in any of the meetings of the Working Committee, Finance Committee or General Body regarding the operation of the Account by Shri Dalmiya.

17. Thereafter, it is a matter of record that Shri Sharad Pawar contested the election for the post of President in the year 2004 and his candidature was opposed by Shri Mahendra Singh who was the member of the Punjab Cricket Board and, in the said election, there was a tie and the present petitioner Shri

Dalmiya who was the then President casted his vote as a President in favour of Shri Mahendra Singh who was declared to be elected as a President. In the next year, i.e. in the year 2005, Shri Pawar again contested the post of President and his team was successfully elected. The petitioner Shri Dalmiya did not contest any post after 2004.

18. Immediately, after the new body came into power the petitioner Shri Dalmiya was questioned and, initially, in January 2006, a resolution was passed that Shri Niranjan Shah would be the authorized signatory of the said Account. In the meeting which was held on 21/2/2006 of the Working Committee, the petitioner Shri Dalmiya was questioned over the operation of the Account and it is alleged that he was not in a position to give proper replies and, therefore, seven days' time was given to him to give reply. The petitioner Dalmiya by letter dated 27/2/2006 gave a reply to the queries which were raised in the meeting of the Working Committee, explaining that various amounts were spent on the fees of the advocates and Chartered Accountant and it was also stated in the said reply that an amount of Rs 21 lakhs had been used for various purposes.

19. Another important aspect which has to be taken into consideration at this stage is that, in the meantime, the Account at Bhowanipore Branch was closed by Shri Dalmiya and, initially, after having noticed that the bank balance in the said Account was Rs 17 lakhs (approximately), a direction was given to issue two Demand Drafts for the said amount in favour of BCCI. Later on, however, these two Demand Drafts were cancelled and the Demand Draft in favour of CAB was directed to be issued. CAB, in turn, issued a cheque in favour of BCCI for an amount of Rs 39 lakhs i.e. an amount of Rs 21 lakhs in addition to Rs 17 lakhs which was bank balance. The show cause notice was issued. Thus, the cheque for an amount of Rs 21 lakhs in addition to Rs 17 lakhs which was already the bank balance was issued immediately after the account was closed in favour of BCCI. At this stage, it has to be noted that this is the gravamen of the charge and the complaint against the petitioner Dalmiya is that there was misappropriation of Rs 21 lakhs. Firstly, it is alleged that two Demand Drafts which were issued in favour of BCCI were cancelled and a Demand Draft was issued in favour of CAB and that the Account was closed though a decision was taken by the BCCI that the complainant should continue to operate the Account and, therefore, the allegation is that, contrary to

the directions which were issued by the BCCI, the account was closed and the money was diverted to CAB and that what was returned was the amount which was higher than what was shown in the balance of the account. It is further alleged that since, in the reply, it was mentioned by the petitioner Dalmiya that Rs 21 lakhs which were given in addition to Rs 17 lakhs which were lying in the Account, had been used by him for various purposes such as Tours and Travel expenses, hotel expenses and payment of advocates' fees. It is alleged that there is an admission on the part of the petitioner Shri Dalmiya of misappropriation. It is, therefore, alleged that the petitioner Dalmiya had acted in a manner which was detrimental to the interest of the BCCI.

20. It is not out of place to mention here at this stage that there is some inherent contradiction in the complaint which is filed in the sense that initially it is alleged that though a resolution was passed that the Account should be operated by Treasurer or by the Secretary, the petitioner was the sole signatory of the Account and, subsequently, at a later stage in the complaint it is alleged that Shri Dalmiya who was the sole authorized signatory had acted in a manner detrimental to the interest of the BCCI.

21. Another allegation which is made in the complaint is that after the accounts were inspected, it was noticed that one K.M. Choudhary who was an employee of the petitioner Dalmiya had, on the letter-head of Shri Dalmiya, directed the Bank to transfer various amounts aggregating to Rs 15,66,270/- in favour of S.G. Traders and Rs 1,84,925/- in favour of J.K. Tours and Travels and Voyage Tours and Travels. The allegation, therefore, is that the person was not authorized to operate the Account had transferred these amounts to S.G. Traders and to Tour and Travel Agencies and, lastly, it is alleged that during the period of last 10 years there were cash withdrawals of Rs 1.50 crores from the said Account for which no explanation has been given by the petitioner Dalmiya.

22. So far as the other petitioners are concerned, it is alleged that they had acted in conspiracy with the present petitioner Dalmiya and, therefore, they had committed an offence punishable under section 120B of the Indian Penal Code.

23. Thus, if the complaint is read as a whole, it essentially is in respect of the transaction of a single Account which was operated by Shri Dalmiya for

a period of 10 years on specific instructions which were given by the Board. The allegation, therefore, is in respect of transfer of certain amounts from this Account to certain persons and, lastly, in respect of the explanation of withdrawal of certain cash amounts over a period of 10 years. The FIR mentioned the amount of misappropriation as Rs 21 lakhs which is, in fact, the amount which was paid by the petitioner Dalmiya through CAB even before he was questioned in the Working Committee Meeting which was held on 21/2/2006. (Emhasis supplied).

24. Shri Shirodkar the learned Senior Counsel appearing on behalf of the petitioners submitted that during the period of 10 years when the account was in operation, total amount of Rs 5 crores was deposited in the said Account out of which the amount of Rs 1,14,76,940/- was paid towards the income-tax dues. An amount of Rs 2,26,00,000/- was transferred to PILCOM Account which was a joint Account operated by three countries in London. The account was audited till the year 2004-2005 and the audit for the year 2005-2006 was yet to be completed. At the end of audit of 2004-2005, an amount of Rs 74,00,000/- was shown in the balance of the account and an amount of Rs 17,00,000/- was the balance when the account was

closed.

25. When the arguments resumed on 10/4/2006, the learned Advocate General appearing on behalf of the State submitted that the investigation had been carried out as directed by this Court for four days in Mumbai and three days in Calcutta and that further investigation was required as certain material has been collected. This Court, however, felt that since the arguments on the earlier date had not been completed by the Advocate General, he was asked by this Court to make his submissions and point out the material which has been gathered during seven days of investigation. The learned Advocate General invited my attention to the statement of Proprietor of Shri S.G. Traders and gave a set of vouchers in respect of voyage Tours and Travels and, thereafter, he continued to make his submissions which have been reproduced hereinabove.

26. If the chronology of events and the facts and material which is placed on record is taken into consideration, prima facie, in my view, it is established that the allegations made in the complaint and the material which is placed on record does not establish the allegation of misappropriation of

amounts. It also does not establish that the account was opened without the knowledge of the complainant. Further, it does not indicate that the amounts have been used for the personal benefit of the petitioner Shri Dalmiya. The reply which is filed by the petitioner Shri Dalmiya to the queries which were raised in the meeting held on 21/2/2006 clearly indicates that there were 64 cases initiated by the Income-tax Department in Calcutta and therefore the Office of the PILCOM Convenor-Secretary had to be continued and some staff members were to be kept to keep tab on the cases. The amount of Rs 65,000/- had to be withdrawn every month to meet the expenses towards the salaries, local conveyance, travelling, courier charges, printing and stationery etc. and in the nine months an amount of Rs 6.5 lakhs was withdrawn, the details of which have been mentioned in the reply. The submission of the learned Advocate General that Rs 65,000/- per month towards the expenses is fictitious and false, therefore, cannot be accepted. It is a common knowledge that the fees of lawyers in specialised Branches of law is very exorbitant to say the least and, therefore, the expenses of Rs 3,31,000/- towards attending Tribunal in Mumbai by lawyers, Chartered Accountants, cannot be said to be fictitious. The fees of lawyers which is

known very often exceeds six digits per day and now it is informed that the lawyers charge fees per hour which also runs in six figures. The complainant himself has acknowledged the fact in the complaint that the account was continued in view of the pending income-tax cases. It is an admitted position that the case is still pending in the High Court of Calcutta. Another fact which has remained undisputed is that on 13/8/1995, the BCCI Working Committee decided that the President and the Secretary would be entitled to reimbursement of all their expenses as per the actuals and the Resolution which is a part of the minutes is as under:-

> "It was unanimously decided that the hotel bills and other expenses incurred by the President and the Hony. Secretary, BCCI, including entertainment expenses incurred by them be reimbursed by the Board."

The Petitioner Shri Dalmiya has explained in his reply the manner in which the amount of Rs 21.74 lakhs was spent. It is possible that some of the expenses shown in the statement is incorrect or needs further clarification but it cannot be said that the said amount has been misappropriated unless the accounts

are audited and the explanation offered is not accepted. Even, in such cases, it would be doubtful whether this would amount to misappropriation as it is nowhere shown that the said amount has been either put in his own pocket or used for the purpose of personal expenditure.

27. Similarly, the explanation which has ben given in respect of the amounts which are transferred to S.G. Traders & Company, the proprietor of S.G. Traders in his statement which was recorded by the Investigating Agency and which was shown to me, indicates that though they were initially dealing in stationery, when they noticed the need of the CAB and BCCI and their requirement of taking vehicles on hire, the proprietor, in turn, hired certain vehicles on rent per month and had given the same to BCCI from time to time. The same is a case of vouchers of Voyage Tours and Travels which are shown to me which indicate that 90% vouchers are in respect of travelling expenses of the petitioner and others were in respect of M/s R.N. Bajoria, Jayant Khaitan and Ajay Kishore & Co. etc. who are the accountants of the BCCI in respect of income-tax cases which were being handled by them. The said vouchers also do not indicate that the money has gone in the pocket of the petitioner Shri Dalmiya

but was used for the actual expenditure incurred for travelling. There is one voucher in the name of K.M. Choudhary and much emphasis was laid by the learned Advocate General on this voucher and it was submitted that this showed that the amount was used for the employee of the petitioner Shri Dalmiya. It is not possible to accept the said submission of the learned Advocate General. It is possible that the petitioner may have asked his employee to travel for the purpose of attending the income-tax cases. Thus, viewed from any angle, at this stage, from the material which is shown to me, it is not possible to accept the submission of the learned Counsel for BCCI and the learned Advocate General that the case of misappropriation and conspiracy is made out against the petitioners. So far as the closing of the INDCOM Account is concerned, it is difficult to accept the submission of the learned Advocate General that it was done with a view to misappropriate the amount. Since the petitioner Shri Dalmiya was the authorized signatory to the knowledge of the complainant and others, the closing of the account contrary to the directions given by the BCCI, at the highest, would amount to impropriety or illegality but cannot by any stretch of imagination be said to be a criminal act on the part of the petitioner Shri Dalmiya.

28. To summarise therefore the facts reveal:-

(a) Unexplained delay.

For 10 long years from 1996 to 2006 no explanation is sought about the account of Bhowanipore Branch.

(b) Undue haste in filing the complaint after removal of the petitioner Shri Dalmiya. On 21/2/2006, for the first time, queries were made about the entries in the Account. Seven days' time was given. A reply was given by the petitioner Shri Dalmiya. Show cause notice was issued and 15 days' time was given to show cause. The said time was over on 15/3/2006. The complaint was filed on 16/3/2006. The complaint does not show as to whether the initial reply given by the petitioner Shri Dalmiya was considered. The accounts for the year 2005-2006 were not audited. The queries pertaining to operation of the account and expenditure were made. The audit was not yet over and before that the complaint was filed.

(c) A complaint was filed at Marine Drive Police Station on 16/3/2006 and, within two days, it was transferred to Economic Offences Wing GBCB CID.

(d) The statements of the accounts at Bhowanipore Branch were examined in the Bank on Saturday & Sunday both being holidays.

(e) Though the entire statements of the Bank Account are available now with the Investigating Officer, the prosecution is not in a position to point out which withdrawal out of Rs 1.50 crores which was made during last 10 years was illegal.

(f) The statement of Proprietor of S.G. Traders which was shown to me reveals that though he was carrying on business of supplying stationery to CAB and others, he had procured vehicles on rent for the purpose of giving the same on hire;

(g) The petitioner Shri Dalmiya has denied that he had authorized Shri K.M. Choudhary to inform the Bank to transfer the account to

S.G. Traders.

(h) In respect of the withdrawal of 5000 pounds from PILCOM Account about which reference was made by Shri Gupte, the learned Senior Counsel appearing on behalf of the BCCI, as indicated earlier, a thorough inquiry had been conducted by the Directorate of Enforcement and the Reserve Bank of India and the petitioner Shri Dalmiya was exonerated from all charges.

(i) There is, therefore, at the moment, no material to indicate, prima facie, any case of misappropriation as alleged by the complainant.

(j) Brooding omnipotence of the State machinery being available at the disposal of the complainant also cannot be ignored.

(k) The complaint does not appear to have been filed bonafide.

29. Considering the material which is available as of today there appears to be a grain of truth in the

allegation of the petitioner Shri Dalmiya that the complaint was filed hurriedly without affording reasonable opportunity to him and was a ruse to remove him permanently from the competition.

30. In any case, custodial interrogation is not necessary taking into consideration the nature of allegations which are made in the complaint which pertain to operation of a single account by the petitioner Shri Dalmiya who was authorized to operate it.

31. In the event any further material is made available to the prosecution, they can always apply for cancellation of bail. However, as of today, no case is made out for justifying the need for custodial interrogation.

32. In the result the following order is passed:-

O R D E R

. The applications for anticipatory bail are allowed. In the event of the arrest of the petitioners in connection with the complaint filed by the complainant

vide C.R. No. 62 of 2006 pending with the Marine Drive Police Station, Marine Drive, Mumbai and EOW, GBCB CID, Unit No.-III, the petitioners be released on bail in the sum of Rs 25,000/- each with one or two sureties in the like amount each.

. The Petitioners shall co-operate with the Investigating Officer in the investigation of the case.

. In the event any fresh material is found in respect of certain other accounts, liberty is granted to the State to apply for cancellation of the bail.

. The petitioners initially shall be released on cash bail in the sum of Rs 25,000/- and, thereafter shall furnish the sureties in the like amount within two weeks.

. The petitioners shall attend the Office of the Investigating Officer as and when called and for that purpose they shall be given 72 hours notice by the respondents. It is made clear that the petitioners may be interrogated during office hours i.e. between 11.00 a.m. and 5.00 p.m. They may be permitted to take their lawyer who shall wait outside

the interrogation room.

. The petitioners shall inform the Investigating Officer whenever they wish to travel abroad.

. Applications are accordingly disposed of.

V.M. KANADE, J.